

UNIFORM LAW COMMISSION

New Acts 2016: Summaries

UNIFORM EMPLOYEE AND STUDENT ONLINE PRIVACY PROTECTION ACT

Today, most individuals have online accounts of some type. These include social media accounts, bank accounts, and email accounts, among others. Generally, when someone asks for access to the login information for, or non-public content of, a personal online account, an individual is free to say “no.” But that is less true in the employment and educational contexts. Employers may have the power to coerce access to personal online accounts of individuals who are, or seek to become, their employees. Similarly, educational institutions may have coercive power over those who are, or seek to become, their students. When an employer or educational institution asks for the login information for, or non-public content of, an employee’s or student’s online account, that person may find it difficult to refuse. In recent years, there have been a number of reports of incidents where employers and educational institutions have demanded, and received, such access.

The Uniform Employee and Student Online Privacy Protection Act (UESOPPA) provides a uniform model for states to adopt. Its principal goal is to enable employees and students to make choices about whether, and when, to provide employers and educational institutions with access to their personal online accounts. To this end, the act prohibits employers and educational institutions from requiring, coercing, or requesting that employees or students provide them with access to the login information for, or non-public content of, these accounts. It further prohibits employers and educational institutions from requiring or coercing an employee or student to add them to the list of those given access to the account (to “friend” them, in common parlance), though it does not prohibit them from *requesting* to be added.

UESOPPA is divided into 10 sections. Section 1 is the short title. Section 2 defines important terms used in the act. Section 3 delineates protections for employee protected personal online accounts and creates exceptions to these protections. Section 4 delineates protections for student protected personal online accounts and creates exceptions to these protections.

Section 3 and Section 4 are both divided into four subsections: subsection (a), which prohibits an employer (or educational institution) from taking certain actions that would compromise the privacy of an employee’s (or student’s) protected personal online account; subsection (b), which creates exceptions to these prohibitions; subsection (c), which provides additional protections for employee (or student) content if an employer (or educational institution) accesses employee (or student) content for a purpose specified in subsection (b)(3); and subsection (d), which provides additional protections when an employer (or educational institution), by virtue of lawful system monitoring technology, gains access to login information for an employee’s (or student’s) protected personal online account.

Section 5 provides remedies for violations of the act, including a private right of action. The remainder of the act contains provisions generally included by the Uniform Law Commission.

UNIFORM FAMILY LAW ARBITRATION ACT

The Uniform Family Law Arbitration Act (UFLAA) creates a statutory scheme for the arbitration of family law disputes. Arbitration is a private process that parties may use to resolve a dispute rather than going to court. During an arbitration, a neutral third party, the arbitrator, hears arguments from the parties, evaluates evidence, and makes a decision on their dispute. Although arbitration has long been used in the commercial context, it has recently begun to gain popularity in the family law sphere.

Under the UFLAA, a “family law dispute” is a contested issue arising under the state’s family or domestic relations law. Family law disputes typically include disagreements about marital property, spousal support, child custody, and child support.

Under the Act, an arbitrator may not:

- grant a divorce;
- terminate parental rights;
- grant an adoption or guardianship of a child or incapacitated person; or
- determine the status of a child in need of protection.

The Act sets out arbitration procedures chronologically, from defining an arbitration agreement to providing standards for vacating a confirmed award. Many of the provisions of the UFLAA will be familiar to arbitrators and practitioners in the dispute resolution field. This is because the UFLAA is based in part on the Uniform Arbitration Act (1955) and Revised Uniform Arbitration Act (2000). The UFLAA’s provisions for arbitrator disclosure, award, appeals, and arbitrator immunity, among others, are drawn substantially from these earlier uniform acts.

Since family law disputes are different from traditional commercial disputes, however, the UFLAA contains some key provisions that do not appear in the Uniform Arbitration Act or Revised Uniform Arbitration Act. Many of these differences have to do with protecting vulnerable individuals during the arbitration process, such as children and victims of domestic violence. For instance, unless waived by the parties, the UFLAA requires arbitrators to be trained in detecting domestic violence and child abuse before arbitrating a family law dispute. If the arbitrator detects abuse, the arbitrator must stay the arbitration and refer the dispute to court. Likewise, if a party is subject to a protection order, the dispute will be referred to court for resolution.

Importantly, the UFLAA requires close judicial review of arbitration awards determining child-related issues. While an award regarding property or spousal support is subject to limited judicial review, a child-related award may not be confirmed by a court unless the court finds that the award complies with applicable law and is in the best interests of the child. Also, de novo review of child-related awards is a bracketed alternative that a state can choose to enact. In addition, some states may want to exclude child-related disputes from arbitration altogether, and the Act provides an opt-out alternative for that purpose.

Another unique provision of the UFLAA relates to agreements to arbitrate a dispute that may arise in the future (often referred to as “pre-dispute agreements”). Pre-dispute agreements are

generally permissible under the UFLAA, in accordance with the UAA and the RUAA. If parties agree to arbitrate a future child-related dispute, however, then the parties must affirm the agreement to arbitrate at the time of the dispute before proceeding to arbitration.

After the court confirms an award, a party may request a modification under state law governing post-decree modifications. If the parties agree, modification actions can be resolved by arbitration.

The UFLAA is an overlay statute meant to work together with the state's existing choice-of-law rules and contractual arbitration law. It provides a comprehensive, clear framework for the arbitration of family law disputes, and should be enacted in every state.

REVISED UNIFORM UNCLAIMED PROPERTY ACT

The Uniform Law Commission first approved a uniform act on unclaimed property in 1954 – the Uniform Disposition of Unclaimed Property Act. Since then, the act has been revised in 1966, 1981 (then renamed the Uniform Unclaimed Property Act), and 1995. The unclaimed property laws of most states are based in whole or in part on one of the multiple versions of the Uniform Act.

After nearly 20 years, the ULC has once again revised the act, approving the Revised Uniform Unclaimed Property Act (RUUPA) in 2016. The Revised Act provides necessary updates that keep up with technological innovation and that recognizes new forms of property not included in prior versions of the Act.

Like its predecessors, the Revised Act provides rules for determining when property is actually abandoned, and when it is, for determining which state gets it.

Unclaimed property involves a lot of money – states were estimated to hold over \$40 billion in 2010. The most common types of unclaimed property are bank accounts and bank deposits, life insurance proceeds, trust and fiduciary accounts, securities, wages, amounts owed in business to business and consumer transactions, class action proceeds, money orders and travelers checks.

The key parties involved in the distribution and processing of unclaimed property are the apparent owner, holder, and administrator. The apparent owner is the person whose name appears on the records of a holder as the owner of property held, issued, or owing by the holder. The holder is the person obligated to hold for the account of, or to deliver or pay to, the owner property that is subject to the RUUPA. If the property is “abandoned” under the Act, then the holder must report the property to the administrator, the state official responsible for administering the RUUPA.

Article 2 of RUUPA establishes rules to determine if property is abandoned. Under the Act, property is presumed abandoned if it is unclaimed by its apparent owner after a specified period of time (the dormancy period). The length of the dormancy period depends on the type of property. RUUPA establishes dormancy periods for some types of property that were not

covered in previous versions of the Act, including health savings accounts, custodial accounts for minors, stored-value cards, and more. RUUPA also clarifies that property is not presumed abandoned if the apparent owner shows an interest in the property during the dormancy period designated in the Act.

Article 3 establishes three priority rules to determine which state may take custody of property that is presumed abandoned. The first-priority rule grants custody to the state of the last-known address of the apparent owner, according to the holder's records. The second-priority rule grants custody to the state of corporate domicile of the holder, if there is no record of the address of the apparent owner, or the address is in a state that does not permit the custodial taking of the property. The third-priority rule permits a state administrator to take custody of the property if (1) the transaction involving the property occurred in the state; (2) the holder is domiciled in a state that does not permit the custodial taking of the property; and (3) the last-known address of the apparent owner or other person entitled to the property is unknown or in a state that does not permit the custodial taking of the property.

Under Articles 4 and 5, the holder of property presumed abandoned must send a notice to the apparent owner about the property and must file a report with the administrator about the property.

Articles 6 and 7 describe how the administrator may take custody of unclaimed property and how it may sell it. Except for securities, the RUUPA allows the administrator to sell the property three years after receipt, but it is not required to do so. Securities may be sold three or more years after the administrator receives the security and gives the apparent owner notice. The administrator is prohibited from selling military medals or decorations awarded for military service. Instead, the administrator may deliver them to military veterans' organizations or governmental entities.

Article 8 directs the administrator to deposit all funds received under the Act into the general fund of the state. Article 8 also requires the administrator to maintain records of the property.

Article 9 addresses various scenarios in which the administrator of one state would need to pay or deliver unclaimed property to another state, either because there is a superior claim to the property by the other state or the property is subject to the right of another state to take custody.

Article 10 explains how an administrator may request property reports and how an administrator may examine records to determine if a person has complied with the Act. Article 11 gives holders the right to seek review of determinations made by the administrator about their liability to deliver property or payment to the state. Article 12 imposes a penalty on a holder that fails to report, pay, or deliver property within the time required by the Act. Civil penalties may also apply if the holder enters into a contract to evade an obligation under the Act.

Article 13 of the RUUPA governs the enforceability of an agreement between an apparent owner and a "finder" to locate and recover property. The Act requires a signed record between the parties to designate the finder as an agent of the owner. Article 14 explains what information is considered confidential under the Act. The Article describes when confidential information may

be disclosed under the Act, and the steps that an administrator must take in the event of a security breach.

The Revised Uniform Unclaimed Property Act makes a number of improvements to earlier versions of the uniform act in order to keep up with technological changes and new forms of property. The RUUPA offers a comprehensive set of rules for unclaimed property and should be enacted in every state.

THE UNIFORM UNSWORN DECLARATIONS ACT

The Uniform Unsworn Declarations Act (UUDA) allows the use of unsworn declarations made under penalty of perjury in state court proceedings. Under the Act, the declarant may be physically located within or outside the boundaries of the United States while making the declaration.

If the state's law either requires or allows use of a sworn declaration, an unsworn declaration made under the Act's rules has the same effect as a sworn declaration.

The UUDA does not apply to:

- A deposition;
- An oath of office;
- An oath required to be given before a specified official other than a notary public;
- A declaration to be recorded under the state's real estate law; or
- An oath required by the state's law relating to self-proved wills.

Under the UUDA, an unsworn declaration must be in substantially the following form:

I declare under penalty of perjury under the law of [insert name of the enacting state] that the foregoing is true and correct.

Signed on the ____ day of _____, _____, at _____.
(month) (year) (city or other location, and state or country)

(printed name)

(signature)

The UUDA builds upon the Uniform Unsworn Foreign Declarations Act (UUFDA), which covers unsworn declarations made outside the boundaries of the United States. States that have enacted the UUFDA should enact the Uniform Unsworn Domestic Declarations Act; states that have not enacted the UUFDA should enact the Uniform Unsworn Declarations Act.

UNIFORM UNSWORN DOMESTIC DECLARATIONS ACT

The Uniform Unsworn Domestic Declarations Act (UUDDA) allows the use of unsworn declarations made under penalty of perjury in state court proceedings. Under the Act, the declarant must be physically located within the boundaries of the United States while making the declaration.

If the state's law either requires or allows use of a sworn declaration, an unsworn declaration made under the Act's rules has the same effect as a sworn declaration.

The UUDDA does not apply to:

- A deposition;
- An oath of office;
- An oath required to be given before a specified official other than a notary public;
- A declaration to be recorded under the state's real estate law; or
- An oath required by the state's law relating to self-proved wills.

Under the UUDDA, an unsworn declaration must be in substantially the following form:

I declare under penalty of perjury under the law of [insert name of the enacting state] that the foregoing is true and correct.

Signed on the ____ day of _____, _____, at _____.
(month) (year) (city or other location, and state)

(printed name)

(signature)

The UUDDA builds upon the Unsworn Foreign Declarations Act (UUFDA), which covers unsworn declarations made outside the boundaries of the United States. States that have enacted the UUFDA should enact the Uniform Unsworn Domestic Declarations Act; states that have not enacted the UUFDA should enact the Uniform Unsworn Declarations Act.

UNIFORM WAGE GARNISHMENT ACT

The Uniform Wage Garnishment Act (UWGA) provides a standard process for wage garnishment to collect debt after a creditor obtains a judgment. Current state laws vary widely and are often outdated, imposing significant burdens on courts and unnecessary costs on creditors, employers, and employees. Sometimes they also fail to provide adequate notice to employees of their rights and obligations. The UWGA creates a standard system for wage garnishments that is largely removed from the courts, operates efficiently thereby reducing costs,

and provides employees with a plain-language notification of their rights and obligations as well as providing them with other protections.

The UWGA applies only to what is sometimes called a “debt garnishment,” meaning a garnishment by a creditor with a money judgment. It does not apply to other procedures that are sometimes called garnishments but are known collectively under the UWGA as ordered deductions. Examples are procedures to collect under a support order; an order of a bankruptcy court; or a debt owed for a federal, state, city, or local tax.

As under current law, a garnishment action commences in court with the filing of a complaint or motion (the procedure differs from state to state) which is served on the employer using the normal rules of civil procedure. That is the last time the court will be involved unless an employee, employer, or creditor seeks its protection. The employer’s answer is made directly to the creditor and amounts deducted from the employee’s earnings are remitted directly to the creditor.

The complaint or motion must provide sufficient information to permit the employer to readily identify the employee, designate an agent with whom the employer must communicate, specify the total amount to be deducted over time, and specify how deducted funds are to be remitted to the creditor. The employer’s answer must indicate whether the named debtor is in fact an employee and must designate an agent with whom the creditor must communicate.

Under current law, a garnishment action may proceed in any jurisdiction in which the employer can be served. The UWGA gives the employee better access to the court by generally requiring that it be located in the jurisdiction where the employee works. The UWGA also extends protection to a cadre of individuals who are classified as independent contractors but who are virtually indistinguishable from employees. It also requires that anyone whose earnings are to be garnished be given a plain-language notification that explains garnishment and provides other helpful information about how to deal with the situation. Wage deductions cannot begin until the first regular payday that occurs 30 or more days after the notification is sent. The act also creates a procedure that encourages creditors to stop wrongful garnishments promptly and return any funds wrongfully garnished.

The UWGA protects creditors by permitting a single garnishment to remain in place until the entire amount owed on the judgment is paid, and it resolves multiple-garnishment issues by requiring creditors to share equally in available funds. The act also promotes efficiency by permitting the creditor and employer to agree to modern payment methods and by permitting an employer that has more than one employee being garnished by the same creditor to send a single, combined payment to the creditor.

The Act provides appropriate penalties for employers that fail to follow required procedures and for creditors that engage in bad-faith conduct. Although most garnishments will proceed entirely outside the court system, creditors, employers, and employees may request a hearing at any time to determine any issue arising under the Act.

AMENDMENT TO THE REVISED UNIFORM LAW ON NOTARIAL ACTS (2016)

The Revised Uniform Law on Notarial Acts (RULONA) was promulgated by the Uniform Law Commission (ULC) in 2010. Among its features, it included provisions to provide a stable infrastructure for the performance of notarial acts with respect to electronic records and signatures.

The Amendment to Revised Uniform Law on Notarial Acts (the Amendment) was approved by the ULC in 2016. If a state has already adopted RULONA, it may adopt the Amendment and add Section 14A to its enacted version of RULONA. If a state legislature plans to adopt RULONA, it may adopt this optional Section as part of its enacted version of RULONA. If a state legislature plans to adopt this optional section as part of its existing law on notarial acts, it should closely examine the Legislative Note for various provisions of RULONA that should be added to the enactment in order to make it complete.

The Amendment was prepared in response to information that individuals outside the United States encountered serious difficulties and unreasonable expense when they needed notarizations for purposes within the United States. Citizens and residents of the United States are traveling and working abroad in increasing numbers. When they require notarizations on records relating to matters in the United States, they may go to an embassy or consulate or, if they are in the military, seek a notarization from an authorized officer. They also may seek a notarization from a notary commissioned by a foreign state, although the very different and distinct responsibilities of foreign notaries may result in denial of their request. Access to embassies and consulates may be difficult, expensive, or delayed due to distance, enhanced security measures or increasing demands on embassy staff. The Amendment responds to this persistent and increasing need. States which desire to address this need should enact the Amendment.

The Amendment authorizes a notary public to perform notarial acts in the state in which he or she is commissioned on behalf of an individual who is physically located outside the United States. It contains provisions designed to protect the integrity of the notarial act by insuring that the notary is able to confirm the identity of the signer and that the individual is acting voluntarily and knowingly. The Amendment contains provisions which:

- Allow the notary, located in the commissioning state, to communicate with a signer located outside the United States;
- Require the use of real-time or synchronous audio and video communication;
- Require that the entire interaction between the notary and the individual be recorded;
- Permit the notary to identify the individual only (a) if the individual is personally known to the notary or (b) with the use of third-party provided identity proofing;
- The record upon which the notarial act is to be performed must:
 - Be part of or pertain to a matter to be filed with or is before a United States court, governmental entity or other entity in the United States; and
 - Involve property located within the United States or a transaction substantially connected with the United States;

- The notarial certificate must include, in addition to the customary information, a statement that the notarial act was performed by the use of communication technology and a statement that the individual represented that he or she is located outside the United States;
- Requires the notary to notify the commissioning officer before performing the first notarial act by the use of communication technology;
- Specifically authorizes the commissioning officer to:
 - Prescribe the means of performing a notarial act by use of communication technology;
 - Establish standards for approval of communication technology;
 - Approve providers of third-party identity proofing; and
 - Establish standards for retention of the video and audio copy of the session.